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APPLICATION OF CENTERPOINT §
ENERGY HOUSTON ELECTRIC, LLC §
FOR AUTHORITY TO CHANGE RATES §

10-5 PM 2:55
BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

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EXPEDITED CONSIDERATION
REQUESTED

**CITY OF HOUSTON AND HOUSTON COALITION OF CITIES' MOTION TO
COMPEL DEPOSITION OF REBUTTAL WITNESS, ALAN FELSENTHAL, OR
IN THE ALTERNATIVE, MOTION TO STRIKE REBUTTAL TESTIMONY
AND REQUEST FOR EXPEDITED CONSIDERATION**

COMES NOW, the City of Houston ("COH") and the Houston Coalition of Cities ("HCOC") and file this Motion to Compel Deposition of CenterPoint Energy Houston Electric LLC's ("CEHE") expert witness Alan Felsenthal, or in the Alternative, Motion to Strike Rebuttal Testimony of Felsenthal, and Request for Expedited Consideration. In support of these Motions, COH/HCOC respectfully show the Administrative Law Judges (the "ALJ") as follows:

I. Summary of Argument

Although COH/HCOC timely notified CEHE of their need to depose rebuttal witness Alan Felsenthal on October 4, 2010, the first business day after CEHE's rebuttal testimony was filed,¹ CEHE initially refused to produce Felsenthal for deposition prior to Saturday, October 9, 2010.² Given that the Hearing on the Merits ("Hearing") is scheduled to begin on Monday, October 11, 2010, COH/HCOC objected to conducting Felsenthal's deposition on Saturday as it will be in the midst of preparing themselves and their witnesses for the trial. Furthermore, as COH/HCOC advised CEHE, COH/HCOC's legal counsel, Tammy Shea, who will be deposing

¹ See Docket Entry No. 596, Rebuttal Testimony of Alan Felsenthal (October 1, 2010).

² While CEHE has now indicated that Felsenthal can be available during the evening of Friday, October 8, 2010, this date and time are unacceptable for the reasons discussed herein.

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Felsenthal, has a prior client commitment that requires her to travel to and from areas in rural West Texas and attend client board meetings over the weekend. Given these factors, CEHE should be ordered to produce Felsenthal for deposition prior to Friday, October 8, 2010.

II. Request for Expedited Consideration

Because the date for the Hearing is quickly approaching and the parties' schedules must still be worked out, COH/HCOC request expedited consideration of these motions. COH/HCOC representatives are willing to meet telephonically or in person for a hearing on these motions, if the ALJ deems a hearing is necessary.

III. Factual Background

On July 23, 2010, the ALJ entered a procedural order scheduling the Prehearing Conference in this proceeding to occur on Friday, October 8, 2010 and the Hearing on the Merits to begin on Monday, October 11, 2010. In addition, the order provided deadlines for CEHE's rebuttal testimony as Friday, October 1, 2010 and discovery on CEHE's rebuttal testimony as Tuesday, October 5, 2010.

Although CEHE has agreed to produce its rebuttal witnesses for deposition outside of the October 5th deadline, CEHE's refusal to produce Felsenthal for deposition prior to Friday, October 8, 2010, necessitates COH/HCOC's filing of the instant motions.

IV. Motion to Compel Deposition of Felsenthal

PUC Procedural Rule 22.142(a)(3) provides that the presiding officer may order that discovery be undertaken by a certain method and/or at a specific time and place as directed by the presiding officer. Therefore, the ALJ undoubtedly has the authority, to order CEHE to produce their rebuttal witness, Alan Felsenthal, for deposition during normal business hours prior to Friday, October 8, 2010.

Further, fairness and due process require that Felsenthal appear for deposition. In administrative proceedings, due process requires that parties be afforded a full and fair hearing on disputed issues.³ This requirement includes the right to cross-examine adverse witnesses and to present and rebut evidence.⁴ At a minimum, a party must have a fair opportunity to prove its case.⁵ COH/HCOC cannot present their position fully and fairly unless they have time to depose adverse witnesses and to prepare for cross-examination of the witness at trial. The only way COH/HCOC will have that opportunity is if Felsenthal is required to appear for deposition prior to Friday, October 8, 2010.

V. In the Alternative, Motion to Strike Rebuttal Testimony of Felsenthal

In the alternative, COH/HCOC request that the ALJ strike Felsenthal's Rebuttal Testimony due to CEHE's failure to make this witness available for deposition. As described in Section IV of this filing, the ALJ is granted broad authority in resolving discovery disputes. Furthermore, the Texas Rules of Civil Procedure also authorize the exclusion of a witness upon the failure of a party, or an officer, director, or managing agent of a party, to appear for a deposition.⁶

As indicated in Section IV, CEHE has refused to produce Felsenthal for deposition prior to Friday, October 8, 2010. Therefore, under both the PUC's Procedural Rules and the Texas Rules of Civil Procedure, it is appropriate and within the power of the ALJ to strike the rebuttal testimony of Felsenthal.

³ *City of Corpus Christi v. Public Utility Comm'n*, 51 S.W.3d 231, 262 (Tex. 2001).

⁴ *Id.*

⁵ *See Lewis v. Metro. Sav. & Loan Ass'n*, 550 S.W.2d 11, 15 (Tex. 1977).

⁶ Rule 215 of the Texas Rules of Civil Procedure authorizes specific actions that a trial court may take against a party that fails to comply with a discovery request, including the failure to appear for a deposition. The trial court's options include excluding witnesses and/or prohibiting a party from introducing designated matters in evidence. TEX. R. CIV. P. 215(4); *see also* TEX. R. CIV. P. 193.6(a); *Davis v. Davis*, No. 13-01-707-CV, 2003 Tex. App. LEXIS 4934 *9 (Tex. App.—Corpus Christi, June 12, 2003, no pet.) (motion to exclude witness granted based on was the witness's failure to appear at a deposition).

VI. Conclusion and Prayer

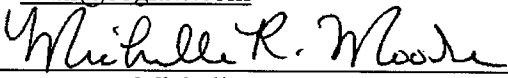
FOR THESE REASONS, the City of Houston/Houston Coalition of Cities respectfully request that the ALJ grant the City of Houston/Houston Coalition of Cities' Motion to Compel the Deposition of Alan Felsenthal and order Mr. Felsenthal to appear for his deposition prior to Friday, October 8, 2010 or in the alternative, that the ALJ issue an order striking the rebuttal testimony of Felsenthal in its entirety (Docket Entry No. 596). COH/HCOG also request that the ALJ grant all other relief, legal and equitable, to which they are justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this the 5th day of October, 2010, a true and correct copy of the foregoing document was served upon all parties of record by facsimile, email and/or U.S. mail, postage paid.

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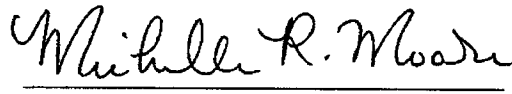
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